

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III
JUDGE**

August 20, 2010

Gregory Strong
Lillie Brown
535 Lexington Ave.
Smyrna, DE 19977

Carolyn H. deBernard, Esq.
Bonnie M. Benson, P.A.
306 E. Camden-Wyoming Ave.
Camden, DE 19934

RE: JKKB v. Gregory Strong and Lillie Brown
C. A. No.: CPU5-10-000695

Decision on Plaintiff's Motion to Strike Defendants' Answer

Dear Mr. Strong, Ms. Brown and Ms. deBernard:

The Court is in receipt of the JKKB's Motion to Strike the Answer filed by the defendants, Gregory Strong and Lillie Brown. The plaintiff filed a complaint in this appeal from the Justice of the Peace Court, and the defendants filed an answer. At the pretrial conference, the Court advised the defendants that the answer they filed was in improper form and advised the defendants to see the Civil Clerk for guidance, as follows:

The Court: What I'd like you to do is file an answer, and you can go downstairs and they will give you a form that you can use. Essentially, you take the Complaint, and based on that, number 1, 2, 3, and put admitted or denied, and you can add an affirmative defense or a counterclaim.

Mr. Strong: What I did, that's not acceptable?

The Court: No. . . . I'd like you to do it in the form that is under Rule 8. I will give you 20 days to do that.

The defendants filed a second answer on July 14, 2010. The new answer, however, does not conform to Court of Common Pleas Civil Rule 8. As a result, the plaintiff has moved to strike the defendants' answer and counterclaim pursuant to Court

Mr. Gregory Strong
Ms. Lillie Brown
Carolyn H. deBernard, Esq.
August 20, 2010
Page Two

of Common Pleas Civil Rule 12(f) on the grounds that the answer is immaterial and insufficient as a defense. The defendants admit in their opposition to the plaintiff's motion that they did not go to the Civil Clerk's office as the Court advised. Nevertheless, the defendants maintain that their new answer clearly states an answer and counterclaim.

Court of Common Pleas Civil Rule 12(f) states:

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion made by a party, within 20 days after the service of the pleading upon the party or upon the Court's own initiative at any time, the Court may order stricken from the pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

CCP Civ. R. 12(f). Furthermore, Court of Common Pleas Civil Rule 8 provides:

(b) Defense; form of denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denial shall fairly meet the substance of the averments denied.

(d) Effect of failure to deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading.

(e) Pleading to be concise and direct.

(1) Each averment of a pleading shall be simple, concise, and direct.


The Court directed the defendants to file an answer that complies with Court of Common Pleas Civil Rule 8, and provided them with helpful information. The defendants chose to ignore the Court's advice to obtain the proper form of answer from the Civil Clerk, and instead filed another answer that fails to comply with Rule 8. Therefore, the plaintiff's motion is granted in part. With the exception of the defendants'

Mr. Gregory Strong
Ms. Lillie Brown
Carolyn H. deBernard, Esq.
August 20, 2010
Page Three

assertion that they do not owe the plaintiff any money, their answer and counterclaim are stricken. All other averments set forth in the plaintiff's complaint are deemed admitted, with the exception of the amount of damages claimed, pursuant to Rule 8(d).

IT IS SO ORDERED.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

Charles W. Welch, III

CWW:mek